waiter. He is employed in two occupations, and no tip credit can be taken for his hours of employment in his occupation of maintenance man. Such a situation is distinguishable from that of a waitress who spends part of her time cleaning and setting tables, toasting bread, making coffee and occasionally washing dishes or glasses. It is likewise distinguishable from the counterman who also prepares his own short orders or who, as part of a group of countermen, takes a turn as a short order cook for the group. Such related duties in an occupation that is a tipped occupation need not by themselves be directed toward producing tips.

[32 FR 13575, Sept. 28, 1967, as amended at 76 FR 18855, Apr. 5, 2011]

§ 531.57 Receiving the minimum amount "customarily and regularly."

The employee must receive more than $30 a month in tips "customarily and regularly" in the occupation in which he is engaged in order to qualify as a tipped employee under section 3(t). If it is known that he always receives more than the stipulated amount each month, as may be the case with many employees in occupations such as those of waiters, bellhops, taxicab drivers, barbers, or beauty operators, the employee will qualify and the tip credit provisions of section 3(m) may be applied. On the other hand, an employee who only occasionally or sporadically receives tips totaling more than $30 a month, such as at Christmas or New Years when customers may be more generous than usual, will not be deemed a tipped employee. The phrase "customarily and regularly" signifies a frequency which must be greater than occasional, but which may be less than constant. If an employee is in an occupation in which he normally and recurrently receives more than $30 a month in tips, he will be considered a tipped employee even though occasionally because of sickness, vacation, seasonal fluctuations or the like, he fails to receive more than $30 in tips in a particular month.

[32 FR 13575, Sept. 28, 1967, as amended at 76 FR 18855, Apr. 5, 2011]

§ 531.58 Initial and terminal months.

An exception to the requirement that an employee, whether full-time, part-time, permanent or temporary, will qualify as a tipped employee only if he customarily and regularly receives more than $30 a month in tips is made in the case of initial and terminal months of employment. In such months the purpose of the provision for tipped employees would seem fulfilled if qualification as a tipped employee is based on his receipt of tips in the particular week or weeks of such month at a rate in excess of $30 a month, where the employee has worked less than a month because he started or terminated employment during the month.

[32 FR 13575, Sept. 28, 1967, as amended at 76 FR 18855, Apr. 5, 2011]

§ 531.59 The tip wage credit.

(a) In determining compliance with the wage payment requirements of the Act, under the provisions of section 3(m) the amount paid to a tipped employee by an employer is increased on account of tips by an amount equal to the formula set forth in the statute (minimum wage required by section 6(a)(1) of the Act minus $2.13), provided that the employer satisfies all the requirements of section 3(m). This tip credit is in addition to any credit for board, lodging, or other facilities which may be allowable under section 3(m).

(b) As indicated in § 531.51, the tip credit may be taken only for hours worked by the employee in an occupation in which the employee qualifies as a "tipped employee." Pursuant to section 3(m), an employer is not eligible to take the tip credit unless it has informed its tipped employees in advance of the employer's use of the tip credit of the provisions of section 3(m) of the Act, *i.e.:* The amount of the cash wage that is to be paid to the tipped employee by the employer; the additional amount by which the wages of the tipped employee are increased on account of the tip credit claimed by the employer, which amount may not exceed the value of the tips actually received by the employee; that all tips received by the tipped employee must be retained by the employee except for